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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,274	08/17/2001	Martin Wildeman	TCZ-42	3091

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Timothy A. Cassidy  
Dority & Manning, Attorneys at Law, P.A.  
P.O. Box 1449  
Greenville, SC 29602

EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT PAPER NUMBER

3765

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/932,274

Applicant(s)

WILDEMAN ET AL.

Examiner

Robert H Muromoto, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites a "process" in the preamble when the claim it refers to (claim 12) states a "fabric" in the preamble. It is not clear which the applicant is claiming.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-14, 21, 23, 25 and 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Prohaska Canadian patent no. 961,250.

Prohaska discloses a method of manufacturing a fabric having a pile on at least one face comprising the steps of weaving, on a flat bed loom, an interlocking base fabric and laying-in at least one additional weft of a loosely spun yarn or roving between each set of adjacent base forming wefts, the additional weft being brought to the face of the fabric in the area in which it is to have a pile surface, napping the face of the fabric

so as to nap the additional weft to form a pile without any significant napping of the base fabric, and shearing the pile surface to the required height (page 2, lines 7-20).

The warp ends (W1-W8) are made from a tightly twisted yarn and may be of a material such as cotton, rayon, or continuous filament warps of any of the well known synthetic fibers. The tightly twisted yarns are generally used as warp ends in weaving and are of particular advantage in the present process in that they resist napping. An interlocking base fabric is formed by weaving wefts P1 and P2 about each of the warp ends W1 to W8. In the embodiment of Figure 1, two additional wefts of a loosely spun yarn or roving P3 and P4 are laid in and the weft P3 is brought to the face of the fabric on which the pile is to be provided after warp end W1, while weft P4 is brought to the pile face of the fabric after warp end W2. Referring to figs 1,5, and 7, the Prohaska reference shows that wefts P3 and P4 are woven into the fabric structure with long floats that are woven in at a lower tension than the P1 and P2 weft yarns which are woven in a plain weave resulting in higher tension than the P3 and P4 weft yarns. The Prohaska invention is particularly suitable for use in the manufacture of Jacquard or dobbie design multi-colored fabrics. For clarity, the examiner states that the P1 and P2 weft yarns of Prohaska correspond to the "first pick" recited in the instant invention and the weft yarns P3 and P4 correspond to the "second pick" recited in the instant invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-20, 22, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prohaska.

Although Prohaska teaches all the limitations above, Prohaska does not teach a specific warp density, first pick yarn density, yarn count, yarn denier, yarn type or type of weft insertion method for the weaving process.

With respect to the limitations of specific warp density, first pick yarn density, yarn count, yarn denier and yarn material, the specification contains no disclosure of either the critical nature of the claimed limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such unsupported limitations cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal levels of specific warp density, first pick yarn density, yarn count, yarn denier, or yarn material for a particular application.

As to claim 18, it is stated in Prohaska that one of the main objectives of the invention was to overcome the difficulties of the prior art by providing a method of making a pile fabric which includes the ability to weave the fabric on a conventional flat bed loom making the production of pile fabrics much cheaper and easier than on "velvet

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looms" that are slow, expensive and need specially trained technicians to run them.

The term conventional flat bed loom does not specify the type of insertion method used, but it is well known in the art to use high speed insertion systems when producing fabrics to increase productivity such as air-jet, water-jet, etc.

Additionally, the applicant states on page 5, line 16-18 of the specification "any suitable weaving device for a weaving system can be used to form the woven fabric substrate".

Therefore it would have been obvious to one of ordinary skill in the art to use an air-jet weft yarn insertion system with the Prohaska invention to produce pile fabrics on conventional flat bed looms but at higher weft insertion rates to increase productivity.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nash teaches velvet-like Jacquard fabrics, and Otto teaches a surface texturing process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Bhm  
November 6, 2003

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700